Supreme Court, U.S.
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No. 83-1730

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SEA-HIRE SERVICE, S.A.,

Petitioner,

—against—

TRINIDAD CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY OF SEA-HIRE SERVICE, S.A.

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REPLY OF PETITIONER SEA-HIRE SERVICE S.A.
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

A

Respondent has mischaracterized petitioner's reasons for granting writ as seeking review of facts. This is most certainly not the case. For purposes of this petition, Sea-Hire has conceded every factual finding of the District Court, including the acceptance of respondent's assertion that although in possession of the hire purchase bareboat charter between petitioner and Platanus containing a prohibition of lien clause, it did not read the clause.

Rather, this petition is grounded upon the issue of whether the district court and the court of appeals for the Second Circuit, in affirming, erred as a matter of law in holding Trinidad to be a special agent on the undisputed facts and as such entitled to assert a maritime lien. As briefed in Sea-Hire's petition for writ of certiorari at Point A, the district court here extended the availability of a maritime lien

to a ship's agent beyond any previously decided case and beyond this Court's directives. On page 3 of its opposition brief, respondent suggests:

> Contrary to Petitioner's suggestion, the Court below did not conclude that general agents of a vessel are entitled to maritime liens. Instead the Court of Appeals held, as a finding of fact, that Respondent met the criteria of a "special", rather than "general" agent, and hence was undisputedly entitled to a maritime lien.

This is wrong. This court is not being asked to review a finding of fact nor is it being asked to believe that the courts below were of the opinion that general agents are entitled to maritime liens. Rather, petitioner contends that the district court, given its findings of fact, erred in holding Trinidad to be a special agent as it could not have reached this conclusion and still have applied the established criteria for the determination of valid maritime liens put forth by this court and numerous circuit courts.

This petition presents this Court with the opportunity to review and clarify the criteria which must be met to allow the assertion of a maritime lien by a ship's agent. Given the present slump of the shipping industry and the predictable resort by creditors to this

harsh remedy, the time is ripe for review. This court should be particularly sensitive to the public need for the highest court of the land to consider significant issues in areas of federal specialty such as admiralty. See Moragne v. States Marine Lines, 398 U.S. 375 (1970) (certiorari granted to determine if holding in the HARRISBURG, 119 U.S. 199 (1886) that maritime law does not afford a cause of action for wrongful death was still good law).

B

Petitioner states in Point B of its brief that:

> It is not disputed that when the sun went down in New York Harbor on June 28, 1983, the day of the arrest, in terms of cash receipts and disbursements, respondent owed petitioner some $118,000 [19a]

Respondent's brief to the Second Circuit conceded that on the day of the arrest its bank received $130,000 from petitioner which produced a substantial cost surplus in favor of petitioner as of that date. There was no such factual contest, hot or otherwise. Respondent conceded it had received more cash from

petitioner than it had paid out as of the date of the arrest.

Nevertheless respondent claims now that an issue of fact is raised as to that point, stating on page 4 of its brief:

> These facts were hotly contested both at the trial level and in the Court of Appeals... Implicit in the decisions below was a finding of fact that on the date of the vessel's arrest, Respondent had made actual, unreimbursed cash outlays on the vessel's behalf, which entitled it to the status of a maritime lien claimant. [Emphasis added].

As was extensively briefed in petitioner's main brief at Point B, by law a maritime lien is extinguished by payment and cannot arise in favor of a person who does not provide necessaries to a vessel himself unless that person becomes subrogated to the rights of the third-party suppliers by paying them. Respondent's assertion that it, in fact, made actual cash outlays [pg. 4 of Respondent's Brief] is contrary to its admissions in the courts below.

Moreover Trinidad's reliance on P.T. Perusahaan Pelayaran Samudera Trikora Lloyd v. T.S. Salzachtal, 373

F.Supp. 267 (E.D.N.Y. 1974) in support of its assertion that it was retroactively subrogated to the rights of third-party lien holders is misplaced. In Salzachtal, the third party (Trikora) who had advanced funds after the date of the arrest for necessaries provided prior to the date of the arrest, had at all times a substantial unsatisfied lien on the vessel. Trikora's original lien was never extinguished by subsequent payments on behalf of the vessel owner, as in the case at bar, and therefore the underpinnings of the original arrest were never removed.

> "...[W]e find Trikora is entitled to be subrogated to the five items for the same reasons we allowed subrogation to the Universal lien. In both cases Trikora became obligated to pay those who performed these services at the time they were performed, which was shortly before the ship was arrested; in both cases Trikora did not pay the supplier until after the arrest and finally in both cases Trikora was not responsible for payment of the item as between itself and [the owner]" 373 F.Supp. at 279, 280 [emphasis added].

Here, as between it and Sea-Hire, Trinidad was responsible to make the payments.

A further distinction is found in the fact that after the arrest in that case "the Court, in order to preserve the business of the ship and in order to simplify matters, requested Trikora to pay Universal, which it did through payment to Universal, by April 13, 1973" (373 F.Supp. at 273), and the Court upheld the liens for the other postarrest payments for the same reasons it allowed subrogation to the Universal lien (Id at 279, above-quoted). Such payments thus were more in the nature of administrative expenses than independent, voluntary payments.

C

Point C of Petitioner's main brief does not, contrary to respondent's assertion on page 5 of its brief, address any question of fact whatsoever. As stated in Petitioner's main brief, this petition presents this Court with the issue as to whether, even crediting the dubious testimony of Mr. J. Ervin, Vice President of respondent that he had never read the prohibition of lien clause present in the charter party between Platanus

and petitioner, the courts below erred as a matter of law in not charging respondent with actual knowledge of the absence of authority of Sea-Hire to create a maritime lien against the vessel for Trinidad's behalf. This is a pure legal issue which accepts the lower courts' findings of fact in toto.

CONCLUSION

FOR THE REASONS SET FORTH IN THE PETITION FOR WRIT OF CERTIORARI AND FOR THE FOREGOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

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